

## **REMARKS**

This Amendment is submitted in response to the final Office Action mailed on October 18, 2006 and is being enclosed with a Request for Continued Examination submitted concurrently herewith. This Amendment represents a submission fully responsive to the final Office Action mailed on April 21, 2005, as required under 37 CFR § 1.114.

Claims 28-48 are pending. Claims 33, 25, and 37 have been amended. Claims 38-48 are new and, along with claims 35-37, read on the specific Species elected in Applicant's March 23, 2006 Response to Election/Restriction Requirement and are generic to all Species. Applicants respectfully submit that this application is in complete condition for allowance and request reconsideration of the application in this regard.

### **Rejections under 35 USC § 112, 2<sup>nd</sup> Paragraph**

Claim 37 stands rejected under 35 USC § 112, 2<sup>nd</sup> Paragraph as being indefinite. Applicants have amended claim 37 in a manner believed to be sufficient to permit the Examiner to withdraw the rejection.

### **Rejections under 35 USC § 103**

#### ***Claims 28, 29, and 32-37 over Abels in view of Kurz***

Claim 28, 29, and 32-37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,607,383 to Abels et al. (hereinafter *Abels*) in view of U.S. Patent No. 5,857,849 to Kurz (hereinafter *Kurz*). The Examiner contends that *Abels* fails to disclose "a metallic ligating member." The Examiner concludes that it would have been obvious to remedy this deficiency of *Abels* in view of the disclosure in *Kurz*. Applicants respectfully disagree.

Independent claim 28 recites “a metallic ligating member coupled with said insert.”

In contrast, neither *Abels* nor *Kurz* discloses an orthodontic bracket with a ligating member coupled with a metallic insert. Instead, as identified by the Examiner, *Abels* discloses a ligating member (20) coupled with a bracket body (10) by a film hinge (8a). The ligating member (20) is not coupled with the metallic insert (13). In fact, the insert (13) only lines the archwire slot (11). As explained in Applicants’ specification at page 3, lines 13-17, this construction for the insert (13) in *Abels* is typical of “conventional orthodontic brackets having non-metallic bracket bodies in which the metallic insert merely operates as a liner for the archwire slot.” The metallic liner (13) in *Abels* does not participate in coupling the ligating member (20) with the bracket body (10).

*Kurz* fails to remedy this deficiency in the disclosure of *Abels*. *Kurz* fails to disclose an insert. *Kurz* discloses a ligating member in the form of cover plate (10b) that is joined to the base (10a) along an edge (22) and is resiliently biased for hinge-like movement relative to the base (10a).

To establish a *prima facie* case of obviousness, the prior art references being combined must teach or suggest all the claim limitations. See MPEP § 2143. Because of this deficiencies of the combined disclosure of *Abels* and *Kurz*, the Examiner has failed to properly support that independent claim 24 is *prima facie* obvious. For at least this reason, Applicants respectfully request that the Examiner withdraw the rejection of independent claim 24.

Because claims 29, and 32-37 depend from independent claim 28, Applicants submit that these claims are also patentable. Furthermore, each of claims 10-13, 15, and 16 recites a unique combination of elements not disclosed or suggested by *Abels* and *Kurz*.

*Claim 30 over Abels in view of Kurz and Moschick*

Claim 30 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Abels* and *Kurz* further in view of U.S. Patent No. 6,264,469 to Moschick (hereinafter *Moschick*).

Applicants respectfully traverse this rejection. Applicants submit that claim 30 is patentable for at least the same reasons as independent claim 28 from which it indirectly depends. In this regard, *Moschick* fails to cure the basic deficiencies of the combination of *Abels* and *Kurz* because *Moschick* fails to disclose a ligating member coupled with the insert element (4). Furthermore, claim 30 recites a unique combination of elements not disclosed or suggested by *Moschick* in combination with *Abels* and *Kurz*.

*Claim 31 over Abels in view of Kurz and Reher*

Claim 31 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Abels* and *Kurz* further in view of U.S. Patent No. 5,254,002 to Reher et al. (hereinafter *Reher*). Applicants respectfully traverse this rejection. Applicants submit that claim 31 is patentable for at least the same reasons as independent claim 28 from which it indirectly depends. In this regard, *Reher* fails to cure the basic deficiencies of the combination of *Abels* and *Kurz* because *Reher* fails to disclose a ligating member coupled with the insert element (14). Furthermore, claim 31 recites a unique combination of elements not disclosed or suggested by *Reher* in combination with *Abels* and *Kurz*.

**New Claims**

Claims 38-48 are new claims. Claims 38-44 depend directly from independent claim 28. Dependent claims 38-44 are patentable for at least the reasons set forth above and, furthermore, recite a unique combination of elements not disclosed or suggested by the art of record. Independent claim 45, and its dependent claims 46-48, are patentable for reasons analogous to those presented above with regard to independent claim 28.

## **Conclusion**

Applicants have made a bona fide effort to respond to each and every requirement set forth in the Office Action. In view of the foregoing remarks, this application is submitted to be in complete condition for allowance and, accordingly, a timely notice of allowance to this effect is earnestly solicited. If there is any additional matter that may be resolved by telephone or fax, the Examiner is invited to contact the undersigned to expedite issuance of this application.

Applicants do not believe fees are dues in connection with filing this communication other than a one-month time extension fee and the RCE fee. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,  
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